

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 31.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.787 of 2010

P.Ramasamy

.. Petitioner

Vs.

1.The Revenue Divisional Officer
Kancheepuram District, Kancheepuram

2. The District Collector
Kancheepuram District at
Kancheepuram

3.The Tahsildar
Office of the Tahsildar
Kancheepuram

4.M.Muniyan

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for records relating to the third respondent's order made in Na.Ka.No.A3/824/2017 dated 30.07.2008 insofar as Sl.No.27 to the annexure and to quash the same and consequently direct the respondents 1 to 3 to appoint the petitioner in the place of fourth respondent and to extend all benefits both service and monetary

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mrs.Vasudha Thiagarajan for R1 to R3
No appearance for R4

O R D E R

Heard Mr.L.Chandrakumar, learned counsel appearing for the writ petitioner and Ms.Vasudha Thiagarajan, learned Additional Government Pleader for the officials respondents 1 to 3.

2. Subject matter of this writ petition pertains to appointment of Village Assistants.

3. Notifications were issued inviting applications from eligible candidates for appointment as Village Assistants in various villages.

4. Thereafter, there was a selection process exercise and a selection list dated 30.07.2008 bearing reference Na.Ka.No.A3/824/2017 was published.

5. In the aforesaid selection list, Village Assistants selected to as many as 28 different villages has been set out.

6. As far as the writ petitioner is concerned, selection of Village Assistant qua Serial No.27 in the aforesaid selection list dated 30.07.2008 alone has been challenged in the instant writ petition.

7. Serial No.27 pertains to 177 Thammanoor Village. One Mr.Muniyan (Son of Munusamy) has been selected and he has been arrayed as Respondent No.4 before me.

8. The challenge to selection qua Serial No.27 is predicated on one pivotal contention. That one pivotal contention on which the challenge is predicated is that the selected candidate belongs to Kolathur Village, which is about 5kms from Thammanoor Village for which he has been selected as Village Assistant, whereas the writ petitioner P.Ramasamy (Son of Perumal) belongs to Melputhur Village, which is only 3 kms from Thammanoor Village.

9. To support his contention, learned counsel for the writ petitioner Mr.L.Chandrakumar referred to a set of rules titled 'Tamil Nadu Village Servants Service Rules, 1980', which has been made in exercise of power under Article 309 of the Constitution of India. This set of rules have been published in G.O.Ms.No.521, Revenue der.VII (2) Department, dated 17.06.1998. This set of rules passed by the Government for the post of Village Assistants and norms have been prescribed therein.

10. Drawing my attention to the aforesaid set of rules, particularly two Rules one Captioned "Residence" and the other being Rule 7(c), learned counsel for the writ petitioner would submit that every person appointed to the post shall reside in the village to which he is appointed. This is rule captioned "Residence". Rule 7(c) stipulates that a person appointed shall belong to a village to which he is appointed or the adjoining village, if no suitable candidate is available from that village. For the sake of convenience I deem it

appropriate to extract the rule captioned "Residence" as well as Rule 7(c). They read as follows:

"Residence

Every person appointed to the post shall reside in the village to which he is appointed."

Rule 7(c)

7.Other qualifications:

a)...

i).....

ii)....

iii).....

b).....

c) The person appointed to the post shall belong to the village to which he is appointed or the adjoining village if no suitable candidate is available from that village"

11. Learned counsel also pressed into service a subsequent Government Order being G.O.Ms.787 dated 06.12.2006, wherein and whereby the State of Tamil Nadu has reiterated the position that the above said rules published in G.O.Ms.No.521, Revenue der.VII (2) Department, dated 17.06.1998 should be adhered to.

12. To buttress his submission that Respondent No.4 ought not to have been selected and that the writ petitioner should have been selected in place of Respondent No.4, learned counsel also took me through the impugned selection list, particularly column Nos.2 and 3. Column No.2 is the village to which the Village Assistant has been appointed and it has been shown as 177 Thammanoor in Serial No.27. Column No.3 is Village adjacent to village to which the selection has been made. That has been shown as Melputhur in Serial No.27. Referring to this, the learned counsel would submit that the writ petitioner belongs to Melputhur village and therefore, he should have been selected even according to the impugned order.

13. Be that as it may, it is to be noted that when the writ petition was moved way back in 2010, an order of interim stay insofar as Serial No.27 is concerned was sought for, but the same was negatived by this Court by order dated 19.01.2010. The said order dated 19.01.2010 is extracted hereunder:

"Question of grant of any stay will not arise, as the order challenged is the appointment of the 4th respondent dated 30.07.2008 and more than 1 ½ years have elapsed. Hence, M.P.No.2 of 2010 stands dismissed."

It is not in dispute that the above order was not carried in appeal.

14. Learned Additional Government Pleader Ms.Vasudha Thiagarajan submits that Mr.M.Muniyan, the selected candidate was since been appointed. To be noted, as mentioned supra, Muniyan is Respondent No.4 before me. Besides this, the Additional Government Pleader also brings to the notice of this Court that the writ petitioner Ramasamy was aged 44 years in 2010, which means he should be over 53 years old now. Besides aforesaid factual matrix of the matter and the trajectory the litigation has taken qua dismissal of stay petition in reaching this final disposal, a strong legal submission has also been made on behalf of the respondents, by the learned State counsel i.e., Additional Government Pleader Ms.Vasudha Thiagarajan, which I refer to infra.

15. The learned Additional Government Pleader pressed into service a reported judgement of this Court being M.Muthulakshmi Vs. The Secretary to the Government of Tamil Nadu Social Welfare and Nutrition Meals Department, Secretariat, Chennai and others. This reported judgment of this Court has been rendered by another learned single Judge of this Court. It is reported in 2012 SCC Online Mad 3772.

16. Writ petition in the reported judgment dealt with appointment of Anganwadi workers. This very issue of appointments being based on villages and proximity of villages to which appointments are made are discussed in the said writ petition. After discussions, a ratio has been laid down by this Court. The ratio laid down is articulated in Paragraphs 84 and 85 of the said judgment. This Court has held that the Government Order and rules pertaining to appointee/selectee belonging to the village concerned or adjacent or proximate village is bad as it would lead to anomalies in promotion. This Court also elucidated the anomalies in promotion, if the Government orders/rules prescribing that the appointee/selectee should belong to that particular village or adjacent village. This aspect of the matter is articulated in Paragraph 84 and 85 of the said judgment by the learned single Judge, which read as follows:

"84. The object sought by these Government Orders cannot be achieved if the reservation is based on villages, as it will not be possible to make provision for promotion of 25% against one post as Anganwadi

worker though senior will not be promoted because of the bar of 3 K.M. It also prescribes the educational qualification. Though the rule makes provisions for extending 3 K.M to 10 K.M, but again, it cannot be said to be workable.

85. The process of selection therefore by selecting the candidates based on village reservation cannot be sustained in law, being unconstitutional, therefore, the whole process of selection stands vitiated being hit by Article 14 and 16 of the Constitution of India, as the process of selection has resulted in denial of consideration to all the eligible persons."

17. It is brought to my notice that the aforesaid reported judgment has been given legal quietus as there is no appeal as against the same. Applying that ratio to the instant case, coupled with the fact that the reported judgment has been rendered in 2012 as opposed to G.O.Ms.No.521 and G.O.Ms.No.787, which were issued back in 1998 and 2006, it becomes clear that the principle that an appointee/selectee should belong to that particular village to which appointment is made or proximate or adjacent village if suitable candidate is not available in the village concerned is not desirable/bad and at times even unworkable as it would lead to anomalies in promotion.

18. In other aspects of the matter, I have also set out the facts situation in this case, which would reveal that it is too late in the day for the writ petitioner.

19. Owing to all that have been stated supra, I am of the view that the prayer in the writ petition cannot be acceded to.

Therefore, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gpa

To

1.The Revenue Divisional Officer
Kancheepuram District, Kancheepuram

2. The District Collector
Kancheepuram District at
Kancheepuram

3.The Tahsildar
Office of the Tahsildar
Kancheepuram

+1cc to Government Pleader sr.65630

+1cc to Mr.L.Chandrakumar, Advocate sr.63438

W.P.No.787 of 2010

pvs (co)
ss (3/10/2017)



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